

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Ted D. Ellis and Teresa Ellis,) C/A No.: 9:19-cv-02163-RMG-MGB
)
Plaintiffs,)
)
)
v.)
Cody C. Kirkman, Individually;)
Amber Swinehammer,)
Individually; Lindsey Gibson,)
Individually; Cody C. Kirkman,)
Amber Swinehammer, and)
Lindsey Gibson, as Agents/)
Officers of Town of Bluffton)
Police Department; and Town of)
Bluffton Police Department,)
)
Defendants.)

)

TO: Arie Bax, Attorney for Plaintiffs

**DEFENDANTS' MOTION TO EXTEND STAY OF
ALL ACTIVITY IN THE INSTANT MATTER
FOR NO LESS THAN 90 DAYS**

Defendant Cody C. Kirkman, with the joinder of remaining Defendants, by and through his undersigned counsel, respectfully moves this Court, in accordance with the provisions of Federal Rules of Civil Procedure Rule 26(b), for a 90-day enlargement of the existing stay by Text Order entered on August 3, 2021, (ECF No. 74), of all activity in the instant matter for a period of no less than 90 days. Officer Kirkman so moves in light of an on-going and parallel criminal investigation into the events which form the basis of the causes of action put forth by Plaintiffs in their Complaint. The remaining named

Defendants join this Motion. The ongoing criminal investigation by federal authorities severely limits the officers' ability to properly participate in the litigation of the civil matter. Since entry of these Orders of the Court, Defendants have complied with the monthly reporting requirements regarding the status of the criminal investigation. (See, EFC filings number 75, filed August 12, 2021; number 76, filed September 13, 2021, and number 77, filed October 13, 2021). The content of each of these reports is incorporated herein into the issues supporting the reasonableness of this requested ninety (90) day enlargement.

By way of summary, on October 13, 2021, the undersigned counsel engaged in status conference with AUSA Kyle Boyton, assigned to the Criminal Investigation. Through this conversation, it was confirmed that the investigation was largely complete and that a prosecutorial decision should be forthcoming in the next two months. While the reasons set forth in Defendant's filings in support of the Order to Stay and the Court's findings in that regard remain unchanged to date, but a prosecutorial decision is expected during the period of the requested enlargement.

This extension of the stay is needed to safeguard the officers' rights against self-incrimination secured by the Fifth Amendment of the United States Constitution. As such, Officer Kirkman, joined by the remaining Defendants, respectfully submit that the on-going, parallel criminal investigation by federal authorities profoundly limits their ability to properly participate in the litigation of the instant matter and this brief ninety (90) day enlargement to the existing stay is mandated by the interests of justice.

Respectfully submitted.

LAW OFFICES OF CHRISTY L. SCOTT, LLC

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ATTORNEY FOR DEFENDANTS

Cody C. Kirkman, Individually and as an Officer of
Town of Bluffton Police Department; Amber
Swinehamer, (mistakenly spelled Swinehammer),
Individually and as an Officer of Town of Bluffton
Police Department; Lindsey Gibson, sued individually
and as a former police officer of the Bluffton Police
Department, and the Town of Bluffton Police
Department

October 26, 2021

Walterboro, South Carolina

Certification of Consultation

This Motion is exempted from the consultation requirements of Paragraph 3 of the Scheduling Order and Local Rule 7.02 (D.S.C.). Prior to filing our initial Motion to Stay, Defendants engaged in consultation with opposing Counsel by telephone consultation but Plaintiff was unable to consent to same.

By: s/Christy L. Scott
Christy L. Scott, Federal ID No. 6215